

§ 563.27

or other applicable statute. If the action contemplated by the notification is not completed within one year after the Office's receipt of the notification, a new notification must be submitted to the Office.

(2) *Other transfer transactions*—(i) *Expedited treatment*. A notice in conformity with § 516.25(a) of this chapter may be submitted to OTS under § 516.40 of this chapter for any transaction under paragraph (c) of this section, provided all constituent savings associations meet the conditions for expedited treatment under § 516.5 of this chapter. Notices submitted under this paragraph must be deemed approved automatically by OTS 30 days after receipt, unless OTS advises the applicant in writing prior to the expiration of such period that the proposed transaction may not be consummated without OTS's approval of an application under paragraphs (h)(2)(ii) or (h)(2)(iii) of this section.

(ii) *Standard treatment*. An application in conformity with § 516.25(b) of this chapter and paragraph (d) of this section must be submitted to OTS under § 516.40 by each savings association participating in a transaction under paragraph (b)(2) or (c) of this section, where any constituent savings association does not meet the conditions for expedited treatment under § 516.5 of this chapter. Applications under this paragraph must be processed in accordance with the procedures in part 516, subparts A and E of this chapter.

[54 FR 49552, Nov. 30, 1989, as amended at 55 FR 13514, Apr. 11, 1990; 57 FR 14344, Apr. 20, 1992; 59 FR 44624, Aug. 30, 1994; 59 FR 66159, Dec. 23, 1994; 62 FR 64146, Dec. 4, 1997; 66 FR 13007, Mar. 2, 2001; 69 FR 68250, Nov. 24, 2004; 71 FR 19811, Apr. 18, 2006]

§ 563.27 Advertising.

No savings association shall use advertising (which includes print or broadcast media, displays or signs, stationery, and all other promotional materials), or make any representation which is inaccurate in any particular or which in any way misrepresents its services, contracts, investments, or financial condition.

[54 FR 49552, Nov. 30, 1989, as amended at 58 FR 4313, Jan. 14, 1993]

12 CFR Ch. V (1–1–08 Edition)

§ 563.33 Directors, officers, and employees.

(a) *Directors*—(1) *Requirements*. The composition of the board of directors of a savings association must be in accordance with the following requirements:

(i) A majority of the directors must not be salaried officers or employees of the savings association or of any subsidiary or (except in the case of a savings association having 80% or more of any class of voting shares owned by a holding company) any holding company affiliate thereof.

(ii) Not more than two of the directors may be members of the same immediate family.

(iii) Not more than one director may be an attorney with a particular law firm.

(2) *Prospective application*. In the case of an association whose board of directors does not conform with any requirement set forth in paragraph (a)(1) of this section as of October 5, 1983, this paragraph (a) shall not prohibit the uninterrupted service, including re-election and re-appointment, of any person serving on the board of directors at that date.

(b) [Reserved]

[54 FR 49552, Nov. 30, 1989, as amended at 58 FR 4313, Jan. 14, 1993]

§ 563.36 Tying restriction exception.

(a) *Safe harbor for combined-balance discounts*. A savings and loan holding company or any savings association or any affiliate of either may vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the company varying the consideration (eligible products), if:

(1) That company (if it is a savings association) or a savings association affiliate of that company (if it is not a savings association) offers deposits, and all such deposits are eligible products; and

(2) Balances in deposits count at least as much as non-deposit products toward the minimum balance.

(b) *Limitations on exception*. This exception shall terminate upon a finding

by the OTS that the arrangement is resulting in anti-competitive practices. The eligibility of a savings and loan holding company or savings association or affiliate of either to operate under this exception shall terminate upon a finding by the OTS that its exercise of this authority is resulting in anti-competitive practices.

[61 FR 60184, Nov. 27, 1996]

§ 563.39 Employment contracts.

(a) *General.* A savings association may enter into an employment contract with its officers and other employees only in accordance with the requirements of this section. All employment contracts shall be in writing and shall be approved specifically by an association's board of directors. An association shall not enter into an employment contract with any of its officers or other employees if such contract would constitute an unsafe or unsound practice. The making of such an employment contract would be an unsafe or unsound practice if such contract could lead to material financial loss or damage to the association or could interfere materially with the exercise by the members of its board of directors of their duty or discretion provided by law, charter, bylaw or regulation as to the employment or termination of employment of an officer or employee of the association. This may occur, depending upon the circumstances of the case, where an employment contract provides for an excessive term.

(b) *Required provisions.* Each employment contract shall provide that:

(1) The association's board of directors may terminate the officer or employee's employment at any time, but any termination by the association's board of directors other than termination for cause, shall not prejudice the officer or employee's right to compensation or other benefits under the contract. The officer or employee shall have no right to receive compensation or other benefits for any period after termination for cause. Termination for cause shall include termination because of the officer or employee's personal dishonesty, incompetence, willful misconduct, breach of fiduciary duty involving personal profit, intentional

failure to perform stated duties, willful violation of any law, rule, or regulation (other than traffic violations or similar offenses) or final cease-and-desist order, or material breach of any provision of the contract.

(2) If the officer or employee is suspended and/or temporarily prohibited from participating in the conduct of the association's affairs by a notice served under section 8 (e)(3) or (g)(1) of Federal Deposit Insurance Act (12 U.S.C. 1818 (e)(3) and (g)(1)) the association's obligations under the contract shall be suspended as of the date of service unless stayed by appropriate proceedings. If the charges in the notice are dismissed, the association may in its discretion (i) pay the officer or employee all or part of the compensation withheld while its contract obligations were suspended, and (ii) reinstate (in whole or in part) any of its obligations which were suspended.

(3) If the officer or employee is removed and/or permanently prohibited from participating in the conduct of the association's affairs by an order issued under section 8 (e)(4) or (g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818 (e)(4) or (g)(1)), all obligations of the association under the contract shall terminate as of the effective date of the order, but vested rights of the contracting parties shall not be affected.

(4) If the savings association is in default (as defined in section 3(x)(1) of the Federal Deposit Insurance Act), all obligations under the contract shall terminate as of the date of default, but this paragraph (b)(4) shall not affect any vested rights of the contracting parties: *Provided*, that this paragraph (b)(4) need not be included in an employment contract if prior written approval is secured from the Director or his or her designee.

(5) All obligations under the contract shall be terminated, except to the extent determined that continuation of the contract is necessary of the continued operation of the association

(i) By the Director or his or her designee, at the time the Federal Deposit Insurance Corporation or Resolution